

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Proceeding to  
Consider Rules to Implement the Broadband  
Equity, Access, and Deployment Program.

R.23-02-016  
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**OPENING COMMENTS OF AT&T CALIFORNIA (U 1001 C) AND  
AT&T MOBILITY IN RESPONSE TO THE ORDER INSTITUTING RULEMAKING  
PROCEEDING TO CONSIDER RULES TO IMPLEMENT THE BROADBAND,  
EQUITY, ACCESS, AND DEPLOYMENT PROGRAM**

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Pursuant to Rule 6.2 of the California Public Utilities Commission’s (“Commission’s”) Rules of Practice and Procedure, Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) and AT&T Mobility<sup>1</sup> (collectively, “AT&T”) submit these opening comments in response to the *Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program* (“OIR”), issued March 1, 2023, and the questions posed in Section 2 of the OIR.

## **I. INTRODUCTION**

The Infrastructure Investment and Jobs Act of 2021 (“IIJA”) created the Broadband Equity, Access, and Deployment (“BEAD”) Program as a means of reducing the number of U.S. households that lack access to reliable, high-speed broadband. The estimated \$1.2 billion in BEAD funding allocated to the state of California,<sup>2</sup> combined with the Federal Funding and Broadband Infrastructure Grant Account programs, can help to improve connectivity for the more than 353,000 households that the Commission estimates lack broadband at speeds of at least 25/3 Mbps,<sup>3</sup> as well as to households that lack download speeds of at least 100 Mbps.<sup>4</sup> The extent to which the BEAD program addresses these needs will depend significantly on the rules the Commission adopts to implement it.

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<sup>1</sup> As used herein, “AT&T Mobility” refers to, collectively, AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C); New Cingular Wireless PCS, LLC (U 3060 C) d/b/a AT&T Mobility; and Santa Barbara Cellular Systems, Ltd. (U 3015 C).

<sup>2</sup> Advanced Communications Law and Policy Institute, New York Law School, *A Guide to Federal Broadband Funding Programs: Updated Estimates of State BEAD Allocations* (January 2023).

<sup>3</sup> California Public Utilities Commission, *California Advanced Services Fund 2021 Annual Report* at 47 (April 2022).

<sup>4</sup> Executive Order No. 73-20 (Aug. 14, 2020) (estimating that 2 million California households lack access to broadband at speeds of 100 Mbps).

Unlike the State and Local Fiscal Recovery Funds and Capital Projects Fund created by the American Rescue Plan, Congress articulated a detailed set of rules for broadband deployment in the BEAD program. In its Notice of Funding Opportunity (“NOFO”), the National Telecommunications and Information Administration (“NTIA”) has allowed states some discretion in adopting the rules that will govern allocation of BEAD funding in the state’s Initial Proposal. However, the fact that some discretion is permitted does not signify that there are gaps in the existing rules which states should fill. AT&T urges the Commission to refrain from using its limited discretion to impose additional criteria or requirements that stray from the program’s objectives and priorities. Instead, the Commission’s Initial Proposal should leverage BEAD funding to efficiently bring broadband service that is as future-proof as possible to the greatest number of Californians, while minimizing the risk of default. The NTIA is most likely to approve a state proposal that adopts clear scoring criteria outlining the maximum number of points to be awarded for each category and the separate standards within categories. This approach will also invite the largest number of serious proposals from qualified bidders, providing the Commission the opportunity to choose among multiple awardees. AT&T hopes to be among the prospective bidders to present proposals.

## **II. ISSUES PRESENTED IN THE PRELIMINARY SCOPING MEMO**

- 1. Extremely High-Cost Threshold. The Commission is required to establish an “Extremely High Cost Per Location Threshold” in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements. How should the Commission define the threshold for locations that constitute “extremely high cost” locations?**

According to the BEAD NOFO, “NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber

projects are deployed wherever feasible.”<sup>5</sup> Projects that exceed the Extremely High Cost Per Location Threshold will be eligible for bids from fixed wireless or satellite providers, who may be able to provide service for a lower cost.

When the Commission has previously awarded Infrastructure Grant Account funds for fiber-to-the-home, the average cost per household has amounted to \$15,650.<sup>6</sup> The Commission’s 2021 California Advanced Services Fund (“CASF”) report lists average costs per household for its various projects as ranging from \$32 to \$277,393.<sup>7</sup> The Infrastructure Grant Account program guidelines define a cost of \$24,700 per serviceable location as “low” and thus appropriate for Ministerial Review.<sup>8</sup> The Federal Funding Account rules set this threshold at \$9,300.<sup>9</sup>

AT&T recommends that, consistent with its current practices, the Commission adopt an Extremely High-Cost Threshold that is close to \$19,000, that, when combined with the BEAD-required 25% match from a subgrantee, would be close to the \$24,700 per customer location set in the Infrastructure Grant Account program. This approach reflects the BEAD NOFO’s explicit preference for the deployment of end-to-end fiber facilities to end users and will help to ensure that the program is as “future-proof” as possible.

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<sup>5</sup> National Telecommunications and Information Administration, *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program* at 31 (May 13, 2022) (“BEAD NOFO”).

<sup>6</sup> California Public Utilities Commission, *Supporting Materials for May 25 Communications Division Staff Workshop on CASF Reform* at 75 (May 17, 2017), available at <https://files.cpuc.ca.gov/Telco/CASF/Reports%20and%20Audits/CASF%20Workshop%20May%2025th.pdf>.

<sup>7</sup> California Public Utilities Commission, *California Advanced Services Fund 2021 Annual Report* at 50-53 (April 2022).

<sup>8</sup> Revised CASF Program Guidelines at A-31.

<sup>9</sup> Federal Funding Account Program Rules and Guidelines at A-23.

2. **Geographic Level.** The NOFO gives flexibility to states to solicit proposals from prospective subgrantees at the geographic level of their choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. States may alternatively solicit proposals for project areas they define or ask prospective subgrantees to define their own proposed project areas. What is the best, or most appropriate, geographic level for subgrantee proposals?

The Commission should allow prospective awardees to identify and propose project areas rather than defining all areas for which funding will be granted. This flexibility will allow bidders to design projects that maximize efficiency in terms of network design and long-term economic viability. Congress recognized the benefit of flexible criteria by defining unserved service projects as those in which 80 percent or more of broadband-serviceable locations are “unserved,” lacking speeds of at least 25/3 Mbps, and underserved service projects as those in which 80 percent or more of locations are “unserved” or “underserved,” lacking speeds of at least 100/20 Mbps.<sup>10</sup> As long as no more than 20 percent of a proposed project’s locations have service at speeds of at least 100/20 Mbps, a project should be eligible for BEAD funding. The Commission should not further restrict the flexibility of prospective awardees in designing project areas.

3. **Overlapping Project Areas.** What mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals?

In the event that two prospective awardees propose overlapping project areas, the Commission should assess factors that include the number of unserved locations to be covered by each proposal and the number of locations that would receive access to end-to-end fiber under each proposal, with a preference for the proposal that would deploy end-to-end fiber to the greatest number of locations. The Commission should also allow prospective awardees to revise

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<sup>10</sup> Public Law 117-58 § 60102(a)(1), 135 Stat. 102 (2021).

their applications in order to remove areas that overlap, or to provide more information, as this helps to ensure a level playing field when assessing proposals that do not present a like-for-like comparison.

**4. Selection Among Priority Broadband Projects. In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, which additional prioritization factors should be considered? How should they each be measured, and should they be weighted in prioritization?**

Additional prioritization factors should focus on the prospective awardee's financial, technical, and managerial qualifications to complete the proposed deployment according to the terms of the award. The Federal Funding Account criteria provide a good example, allowing for the allocation of 10 additional points to applications that demonstrate "financial, technical, and operational capacity to execute the project successfully and completely in the timeframe" and those who demonstrate "a well-planned project with a reasonable budget."<sup>11</sup> The Commission should dedicate appropriate weight to this scoring category to ensure that funded projects are completed on time and within budget, or risk delaying the availability of improved broadband services to Californians in funded project areas.

**5. Selection Among Other Last-Mile Broadband Deployment Projects. In addition to the Primary Criteria and Secondary Criteria required in the Notice of Funding Opportunity, which Additional Prioritization Factors should be considered? How should they each be measured, and should they be weighted in prioritization?**

*See response above.*

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<sup>11</sup> Federal Funding Account Program Rules and Guidelines at A-7.



**6. Challenge Process. What information should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called “unserved?”**

A challenge process for BEAD funds should be consistent with the determination of Congress that unserved and underserved projects may include up to 20% percent of locations that are already served with speeds of at least 100/20 Mbps. This flexible approach recognizes that it is acceptable for two providers to serve certain locations if this achieves the goal of serving those locations that demonstrate a need for improved broadband service.

The Commission should require a challenging provider to present documentation demonstrating that *more than* 20 percent of locations included in a funding proposal are served by reliable broadband with speeds of at least 100/20 Mbps. The timeframes and procedures adopted in the Federal Funding Account rules serve as a good model for expeditious resolution of such challenges.

**7. Match Requirement. The IIJA expressly provides that matching funds for the BEAD Program may come from federal regional government entities and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act, the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act of 2021, to the extent permitted by those laws. What state funding should also be allowed to be used as matching funds?**

The BEAD program rules should grant higher priority to proposals by prospective awardees that provide their own matching funds. As the NOFO states,

While the match may be provided by multiple sources, Eligible Entities are encouraged to require a match from the subgrantee rather than utilizing other sources where it deems the subgrantee capable of providing matching funds. This approach will maximize the impact of Eligible Entity funds and funds provided via other federal programs.<sup>12</sup>

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<sup>12</sup> BEAD NOFO at 20-21.

This approach avoids the complexity, uncertainty, and potential delay that may result when awardees must satisfy multiple sets of requirements as a condition of receiving different sources of funding for the same project.

**8. Statewide Middle Mile. How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network? Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access? In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?**

The BEAD program rules should be focused on expanding broadband service to as many unserved and underserved areas of the state as possible. A requirement, or even a strong incentive, to connect to the statewide middle mile network will encourage inefficiencies in network design that undermine the goal of using public funds to the greatest effect. If utilization of the statewide open-access middle mile network is efficient for a particular bid, the competitive bidding process inherently incentivizes prospective awardees to include the middle mile network in their proposals to make them competitive. Any incentive beyond efficiency would, by definition, force inefficiency. A requirement to use the middle mile, even if it were *not* the most efficient approach, would drive up the cost of broadband deployment and thus reduce the number of Californians that would receive broadband from the expenditure of limited funding sources.

Moreover, the precise location and status of various portions of the middle mile network are not certain. As AT&T has expressed previously, prospective awardees must undertake complex business planning to ensure their applications present the most efficient and cost-effective build considering the location of existing facilities and service agreements.<sup>13</sup>

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<sup>13</sup> *Opening Comments of AT&T California on Staff Proposal to Implement the Federal Funding Account Grant Program Pursuant to the Assigned Commissioner's Ruling Issued September 23, 2021, Rulemaking (R.) 20-09-001, at 13 (Oct. 29, 2021).*

While some construction of the middle mile network has begun, only a small portion of the network is projected to be complete by 2023, and the project is expected to be finalized in 2026.<sup>14</sup> These plans are subject to adjustment, and prospective awardees should not be delayed or prejudiced by the contingencies inherent in any such large-scale project.

Similarly, consultation with the Department of Technology should not be required in the event that some portion of an applicant's middle mile components overlap with the statewide middle mile network, as this would serve to delay evaluation of funding proposals and extension of improved service to Californians. Assuming that awardees have experience and expertise deploying broadband networks and offering broadband services, this should guide them in designing and deploying the necessary network components to provide reliable, robust broadband service.

The Commission should also refrain from mandating open access obligations. Any additional requirements adopted by the Commission should have the aim of making retail broadband internet access service available to Californians in project locations. Obligations that stray from that objective are likely to discourage provider participation in the program, thus reducing the competitiveness of the bidding process and driving up the cost of broadband deployment.

**9. Ministerial Review. Should the Commission include a ministerial review process whereby the Commission delegates to staff the ability to approve BEAD subgrants that meet certain criteria? What should those criteria be?**

The inclusion of a Ministerial Review process has the potential to expedite the disbursement of federal funds; however, the criteria should be adequately calibrated to furthering

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<sup>14</sup> See, e.g., Diana Goovaerts, California kicks off construction of \$3.8B middle mile fiber network, Fierce Telecom (Oct. 14, 2022).

this goal. Criteria for the BEAD program should be similar to those adopted in the Federal Funding Account and Infrastructure Grant Account program guidelines with a few modifications:

- projects for which the total grant does not exceed \$75 million should be eligible for Ministerial Review;
- costs per serviceable location should follow the Infrastructure Grant Account guidelines, at \$24,700 per serviceable location or less; and
- consistent with the BEAD requirements, the presence of some number of locations that have access to broadband at speeds of at least 100/20 Mbps in a project area should not disqualify a proposal from Ministerial Review, provided the served locations constitute less than 20 percent of the proposed project's locations.

The Commission should also consider augmenting the ministerial program to allow prospective awardees who (1) commit to deploy broadband at a per-household cost at or below the threshold, (2) commit to a maximum project grant, and (3) provide a general project time and material estimate to be relieved of certain application and reporting requirements and to be paid upon completion.<sup>15</sup> This would allow successful awardees to shift focus to meeting the construction commitments rather than on documentation. Construction costs may trend higher or lower depending on the particular location, but by agreeing upon the project area household limit and maximum project grant at the outset, the provider would bear the risk, and detailed reporting and itemized receipts would be superfluous.

AT&T additionally proposes that the Commission establish a process to quickly identify incomplete or deficient project proposals that will not be scored. The Commission could create a

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<sup>15</sup> As AT&T has suggested in the past, reporting requirements could be minimized so that awardees only submit annual reports or reports upon completion, and awardees need not submit detailed or itemized receipts. See, *Opening Comments of AT&T California on Staff Proposal to Implement the Federal Funding Account Grant Program Pursuant to the Assigned Commissioner's Ruling Issued September 23, 2021*, Rulemaking (R.) 20-09-001, at 16-18 (Oct. 29, 2021).

minimum list of required elements; prospective awardees whose proposals lack all of these elements could be notified that they must resubmit proposals or face disqualification.

**10. Grant Conditions. What conditions should the Commission impose on BEAD subgrantees-- for example, workforce development (e.g., job training) or affordable plans?**

As stated above, given the comprehensive nature of the BEAD requirements, the Commission should refrain from imposing additional requirements on awardees. The rules should aim to attract the greatest possible number of proposals from qualified bidders in order to maximize the effectiveness of the funds dedicated to bridging the digital divide.

Where affordability and pricing are concerned, the Commission should avoid imposing the five-year price freeze that characterizes the Federal Funding and Infrastructure Grant Accounts. This presents tremendous challenges in the current environment of economic, labor, and supply chain uncertainty. While Congress sought to promote affordability of broadband deployed with BEAD funding, it also rejected the notion that broadband pricing should be regulated.<sup>16</sup>

The Commission should require awardees to participate in the Affordable Connectivity Program (“ACP”) or to offer consumers a similar program, consistent with the Commission’s two other funding account programs. AT&T participates in the ACP, and customers eligible for this program automatically qualify to receive Access from AT&T, which provides Internet access at up to 100 Mbps for \$30 per month. When the ACP benefit is combined with Access, qualified customers can receive Internet access for free.<sup>17</sup> Customers residing on qualified Tribal lands can receive subsidies of up to \$75 per month for Internet access through the ACP.

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<sup>16</sup> See, Public Law 117-58 § 60102(h)(5)(D), 135 Stat. 102 (prohibiting the NTIA from regulating rates charged for broadband service where funding is provided from the BEAD program).

<sup>17</sup> See <https://www.att.com/internet/access/>.

The Commission should also examine whether the state of California can dedicate funds to subsidizing the cost of broadband for eligible low-income consumers, as the NOFO suggests.<sup>18</sup>

Applicants that offer nationwide or consistent pricing for customers within and outside BEAD-funded areas, as well as those that offer choices to consumers of multiple tiers of broadband services for different prices, should be considered to meet the needs of middle-class consumers. For example, AT&T Fiber plans offer the following tiers of service to customers nationwide<sup>19</sup>:

Speed Tier	Price
300 Mbps	\$55 per month (plus taxes)
500 Mbps	\$65 per month (plus taxes)
Up to 1 Gigabit	\$80 per month (plus taxes)
2 Gigabits	\$110 per month (plus taxes)
5 Gigabits	\$180 per month (plus taxes)

A nationwide pricing model requires providers to calibrate their services to the most competitive markets served and benefits broadband customers.

**11. Grant Applications. How many application cycles should there be in a calendar year?**

The BEAD NOFO envisions that after it approves an Eligible Entity's Initial Proposal, the Entity (in this case, the Commission) will solicit bids for funding. If no applications have been received for unserved locations, the Entity may re-open the bidding process. Once the

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<sup>18</sup> BEAD NOFO at 66.

<sup>19</sup> See <https://att.com.internet.fiber>.

Eligible Entity has provisionally awarded all BEAD grants, the NTIA must approve its Final Proposal prior to releasing the remaining funding. If the Final Proposal is not approved, the Entity may have another opportunity to solicit bids.<sup>20</sup>

**12. Payments. What payment milestones should the BEAD subgrantee program adopt?**

The Commission should adopt the same rule regarding payment that apply to the Federal Funding and Infrastructure Grant Accounts, with one modification: the first payment of 10 percent of the award amount should be made upon the signing of the grant agreement rather than upon completion of 10 percent of the project. This small advance will provide each project with the necessary momentum required for completion in a timely manner.

**13. Impacts on environmental and social justice communities, including the extent to which BEAD Program subgrants will impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.**

The BEAD NOFO anticipates that Eligible Entities will demonstrate how weather and climate risks are accounted for in infrastructure projects.<sup>21</sup> The Commission's Environmental and Social Justice Action Plan will be a relevant factor to include in its Initial Proposal. The Commission can also highlight the ways in which increasing access to reliable broadband service will create economic and educational opportunities for certain unserved communities that the Commission anticipates will benefit from BEAD funding, consistent with Goal 3.

**14. Other Issues. How should the Commission implement other issues for which it has discretion under the BEAD Notice of Funding Opportunity?**

As stated earlier, the Commission should not impose requirements that exceed those that have been established by IIJA and the NTIA's NOFO for the BEAD program. Instead, the

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<sup>20</sup> BEAD NOFO at 30-34, 46-49.

<sup>21</sup> *Id.* at 62-64.

Commission should establish a sufficiently flexible and streamlined set of rules in order to attract the greatest number of applications from qualified bidders. This approach will result in a more competitive bidding process, more efficient broadband deployment, and more broadband for Californians.

### **III. CONCLUSION**

In developing its Initial Proposal for BEAD funding, the Commission should adopt funding requirements that are consistent with the detailed program criteria established by the NTIA and aim to maximize the number of qualified bids for broadband deployment. AT&T appreciates the opportunity to comment and looks forward to further participation in this proceeding.

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Respectfully submitted,

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